MONTANA LEGISLATIVE HISTORY

Chapter 268 1997

Bill H _____ S 329 Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 3 25 ____C

_____ ____C

_____ ____C

_____ ____C

Date Out 3-27 ____C

S. Committee on Judiciary

Hearing Date(s) 2-14 ____C

_____ ____C

_____ ____C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/17	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	49	1
2/21	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/06	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	80	19
4/04	3RD READING CONCURRED	71	28
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 244		
	EFFECTIVE DATE: 10/01/97		

SB 327 INTRODUCED BY DOHERTY, ET AL. *LC0455 DRAFTER: LANE*

CREATE THE OFFENSE OF ELECTIONEERING BY PHONE ON ELECTION DAY

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO JUDICIARY		
2/14	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING DO PASS MOTION FAILED	21	29

SB 328 INTRODUCED BY DOHERTY, ET AL. *LC1113 DRAFTER: HEFFELFINGER*

INCREASE THE MINIMUM RETIREMENT BENEFIT PROVISION FOR CERTAIN RETIREES IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO LOCAL GOVERNMENT		
2/11	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/18	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/25	2ND READING DO PASS AS AMENDED MOTION FAILED	23	27

SB 329 INTRODUCED BY HALLIGAN, ET AL. *LC1387 DRAFTER: PETESCH*

REVISE THE LAWS GOVERNING LIMITED PARTNERSHIPS, BUSINESS CORPORATIONS, AND LIMITED LIABILITY COMPANIES

BY REQUEST OF SENATE JUDICIARY COMMITTEE

2/10	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO JUDICIARY		
2/14	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED AS AMENDED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/25	HEARING		

3/27	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	94	5
4/05	3RD READING CONCURRED	92	8
	RETURNED TO SENATE		
4/10	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/11	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 268		
	EFFECTIVE DATE: 10/01/97		

SB 330 INTRODUCED BY VAN VALKENBURG *LC1238 DRAFTER: PETESCH*

AUTHORIZE THE USE OF ACCUMULATED SICK LEAVE TO PURCHASE RETIREMENT SERVICE CREDIT

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO STATE ADMINISTRATION		
2/11	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 331 INTRODUCED BY THOMAS *LC1291 DRAFTER: MCCLURE*

REVISE WORKERS' COMPENSATION ACT PAYMENTS FOR HOSPITAL REIMBURSEMENTS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/11	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	50	0
2/24	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/24	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	66	30
4/04	3RD READING CONCURRED	74	24
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 308		
	EFFECTIVE DATE: 07/01/97		

SB 332 INTRODUCED BY MILLER *LC1060 DRAFTER: MITCHELL*

REQUIRE SOLID WASTE MANAGEMENT FACILITIES LICENSED PRIMARILY AS WASTE TIRE DISPOSAL SITES TO PROVIDE FINANCIAL ASSURANCE

Senate BILL NO. 329

INTRODUCED BY Kallyce C Gp

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING LIMITED PARTNERSHIPS, BUSINESS CORPORATIONS, AND LIMITED LIABILITY COMPANIES; INCORPORATING REVISIONS TO THE UNIFORM LIMITED PARTNERSHIP ACT; PROHIBITING THE WITHDRAWAL OF LIMITED PARTNERS; PROVIDING A SAVING PROVISION FOR SHAREHOLDER AGREEMENTS; PROVIDING FOR THE PURCHASE AND VALUATION OF INTERESTS; AND AMENDING SECTIONS 35-8-304, 35-8-1306, 35-12-504, 35-12-505, 35-12-508, 35-12-521, 35-12-601, 35-12-602, 35-12-604, 35-12-605, 35-12-606, 35-12-607, 35-12-608, 35-12-701, 35-12-703, 35-12-704, 35-12-801, 35-12-802, 35-12-902, 35-12-903, 35-12-904, 35-12-1001, 35-12-1003, 35-12-1004, 35-12-1005, 35-12-1008, 35-12-1104, 35-12-1201, 35-12-1302, AND 35-12-1402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in 35-1-712;

(c) establishes who must be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section must be:

(a) set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is made known to the corporation;

(b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) valid for 10 years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by 35-1-627(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement may not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement must be entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the

shares.

(4) An agreement authorized by this section must cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors must relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholders for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares have not been issued when the agreement is made.

Section 2. Section 35-8-304, MCA, is amended to read:

"**35-8-304. Liability of members to third parties.** (1) A person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company."

Section 3. Section 35-8-1306, MCA, is amended to read:

"**35-8-1306. Responsibility for services.** (1) An individual who renders professional services as

a member or an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. ~~An~~ A member or an employee of a professional limited liability company is not liable for the conduct of other members or employees unless the member or employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose member or employee performs professional services within the scope of the member's or employee's employment or apparent authority to act for the company is liable to the same extent as the member or employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part."

Section 4. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended or restated from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and who is named in the certificate of limited partnership as a limited partner~~.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or

more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 5. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) ~~shall~~ must contain the words "limited partnership", ~~in full~~ the abbreviation "l.p.", or the designation "lp";

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) ~~may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and~~

~~(4)~~ may not be the same as or deceptively similar to the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state."

Section 6. Section 35-12-508, MCA, is amended to read:

"35-12-508. Records to be kept. (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, ~~set forth~~

separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment ~~thereto~~, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; ~~and~~

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(e) unless contained in a written partnership agreement, a writing setting out:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

(ii) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution; and

(iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs wound up.

(2) ~~These records~~ Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours."

Section 7. Section 35-12-521, MCA, is amended to read:

"**35-12-521. Secretary of state to establish fees.** The secretary of state ~~is authorized and required to~~ shall set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment or restatement, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements."

Section 8. Section 35-12-601, MCA, is amended to read:

"**35-12-601. Certificate of limited partnership.** (1) ~~Two or more persons desiring~~ In order to form a limited partnership, ~~shall execute~~ a certificate of limited partnership must be executed. ~~The certificate~~ must be filed in the office of the secretary of state, and ~~shall~~ must set forth:

(a) the name of the limited partnership;

(b) ~~the general character of its business;~~

~~(c)~~ the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

~~(d)~~(c) the name and the business address of each general partner ~~(specifying the general partners and limited partners separately)~~;

~~(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;~~

~~(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;~~

~~(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;~~

~~(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;~~

~~(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;~~

~~(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;~~

~~(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;~~

~~(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner;~~ and

~~(m)~~(d) any other matters the general partners, in their sole discretion, determine to include ~~therein~~.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership

in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 9. Section 35-12-602, MCA, is amended to read:

"**35-12-602. Amendments to certificate -- restated certificates.** (1) A certificate of limited partnership is amended by filing a certificate of amendment ~~thereto~~ in the office of the secretary of state. The certificate ~~shall~~ must set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) ~~a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;~~

~~(b)~~ the admission of a new general partner;

~~(c)~~(b) the withdrawal of a general partner; or

~~(d)~~(c) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement ~~therein~~ in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect~~, but amendments to show changes of addresses of limited partners need be filed only once every 12 months~~.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) ~~No~~ A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) ~~of this section~~ if the amendment is filed within the 30-day period specified in subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment."

Section 10. Section 35-12-604, MCA, is amended to read:

"**35-12-604. Execution of certificates.** (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state ~~shall~~ must be executed in the following manner:

(a) ~~Each original~~ An initial certificate of limited partnership must be signed by ~~each partner named therein~~ all general partners.

(b) Each certificate of amendment must be signed by at least one general partner and by each other general partner who is designated in the certificate as a new general partner ~~or whose contribution is described as having been increased~~.

(c) Each certificate of cancellation must be signed by ~~each~~ all general ~~partner~~ partners.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission ~~or increased contribution~~ of a general partner must specifically describe the admission ~~or increase~~.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ in the certificate are true."

Section 11. Section 35-12-605, MCA, is amended to read:

"**35-12-605. ~~Amendment or cancellation~~ Execution by judicial act.** If the persons required by 35-12-604 to execute any certificate ~~of amendment or cancellation~~ fail or refuse to do so, any other ~~partner and any assignee of a partnership interest~~ person who is adversely affected by the failure or refusal may petition the district court to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation~~ it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate ~~of amendment or cancellation~~."

Section 12. Section 35-12-606, MCA, is amended to read:

"**35-12-606. Filing in the office of the secretary of state.** (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment, restatement, or cancellation ~~(~~or of any judicial decree of amendment, restatement, or cancellation~~)~~ must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of ~~his~~ the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform

to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing ~~thereof~~;

(b) file the original in ~~his~~ the secretary of state's office; and

(c) return the copy to the person who filed it or ~~his~~ the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, ~~(~~or judicial decree of amendment~~)~~ in the office of the secretary of state, the certificate of limited partnership is amended or restated as set forth ~~therein~~ in the certificate.~~; and upon~~ Upon the effective date of a certificate of cancellation ~~(~~or a judicial decree ~~thereof)~~ of cancellation, the certificate of limited partnership is canceled."

Section 13. Section 35-12-607, MCA, is amended to read:

"**35-12-607. Liability for false statement in certificate.** If any certificate of limited partnership or certificate of amendment, restatement, or cancellation contains a false statement, ~~one~~ any person who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on ~~his~~ the person's behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who ~~thereafter~~ after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605."

Section 14. Section 35-12-608, MCA, is amended to read:

"**35-12-608. Constructive notice.** The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated ~~therein~~ in the certificate as ~~limited~~ general partners are ~~limited~~ general partners but is not constructive notice of any other fact."

Section 15. Section 35-12-701, MCA, is amended to read:

"35-12-701. Admission of ~~additional~~ limited partners. (1) A person becomes a limited partner:

(a) at the time the limited partnership is formed; or

(b) at any later time specified in the partnership agreement for becoming a limited partner.

~~(1)~~(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as ~~a new~~ an additional limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

~~(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.~~"

Section 16. Section 35-12-703, MCA, is amended to read:

"35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner ~~as such~~ is not liable for the obligations of a limited partnership unless, in addition to the exercise of ~~his~~ the rights and powers as a limited partner, ~~he takes part~~ the limited partner participates in the control of the business. However, if the limited ~~partner's participation~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, ~~he~~ the limited partner is liable only to persons who transact business with the limited partnership ~~with actual knowledge of his participation in control~~ reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific

obligations of the limited partnership;

(d) ~~approving or disapproving an amendment to the partnership agreement~~ taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership; ~~and~~

(e) requesting or attending a meeting of partners;

~~(e)~~(f) proposing, approving, or disapproving, by voting or otherwise, ~~on~~ one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership ~~other than in the ordinary course of its business~~;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; ~~or~~

(v) the removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by ~~him~~ the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits ~~his~~ the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by ~~subsections (2)(a) and (2)(b) of~~ 35-12-505(2)(a) and (2)(b), is liable to creditors who extend credit to the limited partnership without actual

knowledge that the limited partner is not a general partner."

Section 17. Section 35-12-704, MCA, is amended to read:

"**35-12-704. Person erroneously believing ~~himself a~~ limited partner status.** (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, ~~he~~ the person:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show ~~the withdrawal or before an appropriate certificate is filed to show his status as a limited~~ that the person is not a general partner ~~and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602~~, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction."

Section 18. Section 35-12-801, MCA, is amended to read:

"**35-12-801. Admission.** After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted ~~only~~ as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the ~~specific~~ written consent of ~~each partner~~ all partners."

Section 19. Section 35-12-802, MCA, is amended to read:

"**35-12-802. When person ceases to be general partner of limited partnership.** Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general

partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to be a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in writing in the ~~certificate of limited~~ partnership agreement, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for ~~himself~~ the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;

(5) unless otherwise provided in writing in the ~~certificate of limited~~ partnership agreement, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) ~~his~~ the general partner's death; or

(b) the entry by a court of competent jurisdiction adjudicating ~~him~~ the general partner incompetent to manage ~~his~~ the general partner's person or ~~his~~ property;

(7) in the case of a general partner who is acting as ~~such~~ general partner in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership."

Section 20. Section 35-12-902, MCA, is amended to read:

"35-12-902. Liability for contributions. (1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

~~(1)~~(2) Except as otherwise provided in the ~~certificate of limited~~ partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether ~~he~~ the partner is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ records required to be kept pursuant to 35-12-508, of the stated contribution that has not been made.

~~(2)~~(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or ~~whose claim arises~~ otherwise acts in reliance on that obligation after the ~~filing of the certificate of limited partnership or an amendment thereto~~ partner signs a writing ~~which~~ that, in either case, reflects the obligation and before the amendment or cancellation ~~thereof~~ to reflect the compromise may enforce the precompromise obligation."

Section 21. Section 35-12-903, MCA, is amended to read:

"35-12-903. Allocation of profits and losses. The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in writing in the

partnership agreement. If the partnership agreement does not ~~so~~ provide for the allocation in writing, profits and losses must be allocated on the basis of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ records required to be kept pursuant to 35-12-508, of the contributions actually made by each partner to the extent they have not been returned."

Section 22. Section 35-12-904, MCA, is amended to read:

"**35-12-904. Allocation of distributions.** Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not ~~so~~ provide for the allocation in writing, distributions must be made on the basis of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ records required to be kept pursuant to 35-12-508, of the contributions actually made by each partner to the extent they have not been returned."

Section 23. Section 35-12-1001, MCA, is amended to read:

"**35-12-1001. Interim distributions.** Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before ~~his~~ the partner's withdrawal from the limited partnership and before the dissolution and winding up ~~thereof:~~

~~(1)~~ to the extent and at the times or on the happening of the events specified in the partnership agreement~~; and~~

~~(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership~~."

Section 24. Section 35-12-1003, MCA, is amended to read:

"**35-12-1003. Withdrawal of limited partner.** A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in writing ~~in the certificate of limited partnership and in accordance with any procedures provided~~ in the partnership agreement. If the ~~certificate of limited~~ partnership agreement does not specify the time or the events on the happening of which a limited partner may withdraw ~~from the limited partnership or a definite time for the dissolution and winding up of the limited partnership~~, a limited partner may not withdraw ~~from the~~ prior to the time of the

dissolution and winding up of the limited partnership ~~upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state~~."

Section 25. Section 35-12-1004, MCA, is amended to read:

"**35-12-1004. Distributions upon withdrawal.** ~~Except as provided in 35-12-1001 through 35-12-1008, upon~~ Upon withdrawal any withdrawing partner is entitled to receive any distributions to which ~~he~~ the partner is entitled under the partnership agreement and, if not provided, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's interest in the limited partnership as of the date of withdrawal, based upon ~~his~~ the partner's right to share in distributions from the limited partnership."

Section 26. Section 35-12-1005, MCA, is amended to read:

"**35-12-1005. Distributions in kind.** Except as provided in writing in the ~~certificate of limited~~ partnership agreement, a partner, regardless of the nature of ~~his~~ the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to ~~him~~ the partner exceeds a percentage of that asset ~~which~~ that is equal to the percentage in which ~~he~~ the partner shares in distributions from the limited partnership."

Section 27. Section 35-12-1008, MCA, is amended to read:

"**35-12-1008. Liability upon return of contributions.** (1) If a partner has received the return of any part of ~~his~~ the partner's contribution without violation of the partnership agreement or this chapter, for a period of 1 year ~~thereafter he~~ after the return, the partner is liable to the limited partnership for the amount of ~~his~~ the contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of ~~his~~ the partner's contribution in violation of the partnership agreement or this chapter, for a period of 6 years ~~thereafter he~~ after the return, the partner is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the value, ~~(~~as set forth in the ~~certificate of limited~~ partnership~~)~~ records required to be kept pursuant to 35-12-508, of ~~his~~ the partner's contributions ~~which~~ that have not ~~theretofore~~ been distributed to ~~him~~ the partner."

Section 28. Section 35-12-1104, MCA, is amended to read:

"**35-12-1104. Right of assignee to become limited partner.** (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the ~~certificate of limited~~ partnership agreement; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of ~~his~~ the partner's assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time ~~he~~ the assignee became a limited partner ~~and which could not be ascertained from the certificate of limited partnership~~.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902."

Section 29. Section 35-12-1201, MCA, is amended to read:

"**35-12-1201. Nonjudicial dissolution.** A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in writing in the ~~certificate of limited~~ partnership agreement;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the ~~certificate of limited~~ written provisions of the partnership agreement

permits the business of the limited partnership to be carried on by the remaining general partner and ~~he~~ the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202."

Section 30. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership ~~must~~ shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and the date of its formation;

(3) ~~the general character of the business it proposes to transact in this state;~~

~~(4)~~ the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

~~(5)~~(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if ~~no~~ an agent has not been appointed pursuant to subsection ~~(4)~~(3) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

~~(6)~~(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; ~~and~~

~~(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses~~

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 31. Section 35-12-1402, MCA, is amended to read:

"**35-12-1402. Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and must have been a partner at the time of the transaction of which ~~he~~ the plaintiff complains or ~~his~~ the plaintiff's status as a partner must have devolved ~~upon him~~ by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

NEW SECTION. **Section 32. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 35, chapter 1, part 8, and the provisions of Title 35, chapter 1, part 8, apply to [section 1].

-END-

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0289	2/06	2/11		PASS AS AMENDED VOTE:10-0	2-13	2/14
SB0291	BROOKE, VIVIAN 2/06	2/14	ADD SEXUAL ORIENTATION TO MALICIOUS HARASSMENT LAWS	TABLED ON 02/19 VOTE: 7-3		
SB0303	WILSON, WILLIAM 2/07	2/11	ALLOW JUDGE TO REQUIRE CERTAIN OFFENDERS TO HAVE IGNITION INTERLOCK DEVICE	PASS AS AMENDED VOTE: 8-2	2-18	2/18
SB0314	CRIPPEN, BRUCE 2/08	2/13	REVISE VENUE	DO PASS VOTE:6-4	2-17	2/18
SB0318	BECK, TOM 2/08	2/13	DISALLOW ORAL EVIDENCE ON EQUITABLE ESTOPPEL DEFENSE RE: WRITTEN CONTRACT	TABLED ON 02/17 VOTE:9-1		
SB0321	HALLIGAN, MIKE 2/11	2/14	PROVIDE FOR A MOBILE HOME COURT MEDIATOR	PASS AS AMENDED VOTE:7-3	2-17	2/18
SB0327	DOHERTY, STEVE 2/11	2/14	CREATE OFFENSE OF ELECTIONEERING BY PHONE ON ELECTION DAY	PASS AS AMENDED VOTE:8-2	2-17	2/18
SB0329	HALLIGAN, MIKE 2/11	2/14	REVISE LAWS GOVERNING BUSINESS ENTITIES	PASS AS AMENDED VOTE:10-0	2-14	2/14
SB0341	STANG, BARRY 2/12	2/17	FELONY PARTNER OR FAMILY MEMBER ASSAULT	DO PASS VOTE:10-0	2-17	2/18
SB0368	LYNCH, J. D. 2/13	2/18	REGULATE SALE AND IMPORTATION OF VIDEO GAMBLING MACHINES	PASS AS AMENDED VOTE: 10-0	2-18	2/18
SB0369	SWYSGOOD, CHARLES 2/15	2/18	ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES	DO PASS VOTE:10-0	2-19	2/19
SB0374	HARGROVE, DON 2/17	2/20	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW	PASS AS AMENDED VOTE:7-3	2-21 FINANCE & CLAIMS	2/22
	HARP, JOHN		GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRUCE D. CRIPPEN**, on February 14, 1997, at 8:00 a.m. in the Senate Judiciary Chambers (Room 25) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 263, posted February 5
SB 291, posted February 8
SB 321, posted February 11
SB 329, posted February 12
SB 327, posted February 11
Executive Action: SB 263, SB 329

EXECUTIVE ACTION ON SB 230

Amendments: sb023005.avl, sb023006.avl **(EXHIBITS #a AND #b)**

Motion/Vote: **SEN. SHARON ESTRADA MOVED SB 230 BE TAKEN OFF THE TABLE. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN.S HALLIGAN, BISHOP, JABS, AND DOHERTY WHO VOTED NO.**

Motion: **SEN. ESTRADA MOVED THE AMENDMENTS sb23005.avl BE ADOPTED.**

would buy a tax-free bond for the Trust. D.A. Davidson is performing a service, and this would allow D.A. Davidson to sell a bond to the Trust.

John Cadby, Montana Bankers Association. The Association supports the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 329

Sponsor: **SEN. MIKE HALLIGAN, SD 329, Missoula**

Proponents: **Elaine H. Gagliardi, Business, Trust, Tax Estate and Real Property Section of the Montana State Bar**
Kristen Juras

Opponents: **None**

Opening Statement by Sponsor: **SEN. MIKE HALLIGAN, SD 329, Missoula.** This is the Committee bill to deal with pressing issues on limited partnerships and limited liability companies brought by the Montana State Bar. I will reserve the right to close.

Proponents' Testimony: **Elaine Hightower-Gagliardi, Business, Trust, Tax Estate and Real Property Section of the Montana State Bar, and visiting professor at the University of Montana School of Law.** Sally Deaver and I worked on this to make it easier for owners of businesses in Montana to do business in the State.

Section 1 is a new section on the Model Business Act, recently adopted by the American Bar Association, and allows shareholders to enter into more flexible agreements and to operate more informally and still have limited liability - more flexible without the statutory closed corporation status.

{Tape: 1; Side: A; Approx. Time Count: #37.7; Comments: None.}

Section 3 makes a technical correction to the Professional Limited Liability Company Act. Right now they are only protected against malpractice of an employee, so "member" was inserted to broaden the language.

Section 4 simplifies information to go into the certificate of limited partnership. Apparently, after 1985, when the Uniform Act was drafted, Montana never picked this up, although 43 states have done so. This was brought to our attention by Dean Eck at the University of Montana School of Law.

Sections 8 and 24 contain the two deviations from the Uniform Act, so that closely held businesses can actively plan to avoid payment of federal estate and gift tax liability. It now reads that a limited partner can withdraw on six months notice and the remaining partners must buy that limited partner out.

If this is changed, as proposed in the bill, a limited partner would not be able to withdraw unless this was drafted in the agreement.

In 1990 Congress amended the Federal Estate and Gift Tax Code, so it could only be amended this way.

{Tape: 1; Side: B; Approx. Time Count: 00; Comments: 8:47 a.m..}

A tax savings sample is shown on page 2 of **EXHIBIT # 1.** If this is left as it is now, valuation would remain at about a 35 percent discount.

Kristen Juras. I strongly support these changes, as they greatly enhance our flexibility in helping these people.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 321

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**

Opponents: **Margaret Morgan, Director, Montana Association of Realtors (MAR)**
Janet Robideau, Montana People's Action

Proponents: **Sharon Ruiz, Montana People's Action**
Bill DeCou, Montana People's Action
Therese Hetzel, Montana People's Action
Ronda Carpenter, Montana Housing Providers
Daniel McLean, Montana State Bar
Vern Fischer, Great Falls mobile home park owner
Jim Whitaker, Great Falls, IPM

Opening Statement by Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula.** We are attempting to create a mobile home and manufactured housing ombudsman patterned after Oregon's program. Section 9 of the bill provides for a $1 fee on each space in each mobile/manufactured home community. We made no attempt to expect the owner of a mobile home park to pay for this legislation.

The ombudsman would mediate disputes statewide, to bring common sense to the many rules governing mobile home parks in communities in Montana. This is an attempt to bring about some

{Tape: 3; Side: A; Approx. Time Count: #1.5; Comments: 11:35 a.m..}

EXECUTIVE ACTION ON SB 263

Motion: **SEN. BISHOP MOVED SB 263 DO PASS.**

Discussion: **SEN. JABS.** Does this have anything to do with augmented estates? **SEN. BISHOP.** No.

ACTING CHAIRMAN HOLDEN. Is there anything to do with life insurance in this bill? **SEN. BISHOP.** No.

Vote: **SEN. BISHOP'S MOTION THAT SB 263 DO PASS CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 329

Amendments: sb32901.agp - **EXHIBIT 14**

SEN. HALLIGAN. There was one amendment that **Valencia Lane** and I worked on, as a page was missed when the FAX came in (sb32901.agp)

Motion: **SEN. HALLIGAN MOVED TO ADOPT THE AMENDMENTS.**

Discussion: **SEN. HALLIGAN. SEN. NELSON** had a concern in her coop in Plentywood which was dissolving and wanted to give property such as computers to the school. This amendment addresses those concerns. The other amendment is a clean-up amendment.

Vote: **SEN. HALLIGAN'S MOTION TO ADOPT THE AMENDMENTS TO SB 329 CARRIED UNANIMOUSLY.**

Motion: **SEN. HALLIGAN MOVED SB 329 DO PASS AS AMENDED.**

SEN. HALLIGAN. I will make sure we have a good explanation when the bill gets to the floor, as these changes make it more efficient for businesses to do business in Montana. The bill gets us up to speed on Uniform Limited Partnerships and Limited Liability Companies, to be consistent nationally and stay competitive.

Vote: **SEN. HALLIGAN'S MOTION SB 329 DO PASS AS AMENDED CARRIED UNANIMOUSLY.**

Exhibit #1 is not on the CD available at the Law Library.

Please check at the Historical Society Library/Archives for the original.

2-14-97

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 2/14/97
BILL NO. SB 329

Amendments to Senate Bill No. 329
First Reading Copy

Requested by Senator Nelson
For the Committee on Judiciary

Prepared by Greg Petesch
February 13, 1997

1. Title, line 9.
Following: ";"
Insert: "ALLOWING A NONUTILITY COOPERATIVE TO DISTRIBUTE UNCLAIMED SHARES FOR CIVIC OR CHARITABLE PURPOSES IN THE COMMUNITY IN WHICH THE COOPERATIVE IS LOCATED;"

2. Title, line 11.
Following: "35-12-608,"
Insert: "35-12-611,"

3. Title, line 13.
Following: "MCA"
Insert: ", AND SECTION 3, SENATE BILL NO. 25"

4. Page 10, line 29.
Insert: "**Section 15.** Section 35-12-611, MCA, is amended to read:
"**35-12-611. Application for renewal of certification.** One original and one copy of an application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the ~~following~~ information~~:~~
~~(1) the complete name of the limited partnership;~~
~~(2) the name and address, including street name and number, if any, of each general partner;~~
~~(3) the address of the principal office of the limited partnership, including the street name and number;~~
~~(4) a description of the business;~~
~~(5) the name of the county or counties in which business is being transacted; and~~
~~(6) the name and address of the specified agent for service of process in the state~~ required by 35-12-601."""
Renumber: subsequent sections

5. Page 12, line 14.
Following: "the"
Insert: "admission or"

6. Page 20, line 11.
Insert: " NEW SECTION. **Section 33. Property of nonutility cooperatives.** If Senate Bill No. 125 is passed and approved, then section 3 of Senate Bill No. 125 is amended to read: "**Section 3. Presumptions of abandonment.** (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0314	CRIPPEN, BRUCE 3/03	3/21	REVISE VENUE	CONCUR AS AMENDED 03/27 VOTE: 9-8		4/02
SB0320	BROOKE, VIVIAN 3/03	3/24	ESTABLISHING THE MONTANA GOVERNMENT ACCOUNTABILITY ACT	TABLED ON 03/27 VOTE: 10-8		
SB0329	HALLIGAN, MIKE 2/21	3/25	REVISE LAWS GOVERNING BUSINESS ENTITIES	CONCUR 03/27 VOTE: 18-2		3/27
SB0341	STANG, BARRY 3/03	3/24	FELONY PARTNER OR FAMILY MEMBER ASSAULT	CONCUR 03/24 VOTE: 17-0		3/25
SB0369	SWYSGOOD, CHARLES 3/03	3/24	ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES	CONCUR AS AMENDED 03/27 VOTE: 19-0		4/02
SB0374	HARGROVE, DON 4/03	4/09	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW	CONCUR AS AMENDED 4/14 VOTE: 11-9		4/15
SB0382	HARP, JOHN 3/03	3/25	GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS	TABLED ON 03/27 VOTE: 11-9		
SB0383	CRIPPEN, BRUCE 3/03	3/21	CRIMINAL STREET GANG TERRORISM ENFORCEMENT & PREVENTION ACT	CONCUR 03/27 VOTE: 17-1		3/27

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 25, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Absent: Rep. Chris Ahner
Rep. William Boharski until 8:00 AM
Rep. Diana Wyatt until 8:15 AM
Rep. Liz Smith until 7:30 AM

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 289, SB 329, SB 382
POSTED 3/6; 3/13 AND 3/20

Executive Action: HB 163 DO PASS AS AMENDED
SB 308 BE CONCURRED IN

EXECUTIVE ACTION ON HB 163

Motion: **REP. SOFT moved to amend HB 163.** **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 4.1; Comments: The previous action on HB 163 had been suspended. The motion to amend followed an explanation of the amendments by REP. SOFT. This set of minutes is recorded on five 60-minute tapes.}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 4.5}

Vote: The motion carried 17 - 0. REPS. ELLINGSON and WYATT voted aye by proxy. REPS. SMITH, WYATT, AHNER, ELLINGSON and BOHARSKI were absent.

Motion: **REP. SOFT moved HB 163 DO PASS AS AMENDED.**
{Tape: 1; Side: A; Approx. Time Count: 7.2}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.3-Tape 1; Side B; 8.5}

Vote: The motion carried 15 - 4; REPS. McGEE, MOLNAR, CURTISS and CLARK voting no. REPS. WYATT, ELLINGSON, TASH and AHNER voted aye by proxy. REP. BOHARSKI was absent and left no proxy.

EXECUTIVE ACTION ON SB 308

Motion: **REP. CURTISS moved SB 308 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 9.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 9.9 - 25.5; Comments: REP. GRIMES requested that his comments regarding the intent of the committee, the intent of the legislation as well as the intended meaning of "other written authority" on page 2, line 21. REP. McCULLOCH commented on the fiscal impact.}

Motion/Vote: **REP. HURDLE moved to table SB 308.** The motion failed by voice vote.
{Tape: 1; Side: B; Approx. Time Count: 27.8}

Vote: The motion to concur in SB 308 carried 13 - 7; REPS. HURDLE, McCULLOCH, PEASE, SANDS, WYATT, ELLINGSON and KOTTEL voting no. REPS. AHNER and TASH voted aye by proxy. REPS. WYATT and ELLINGSON voted no by proxy.

HEARING ON SB 329

Opening Statement by Sponsor: **SEN. MIKE HALLIGAN** **EXHIBIT 2**
{Tape: 2; Side: A; Approx. Time Count: 0.1}

Proponents' Testimony:

PROF. ELAINE GAGLIARDI, Montana Bar, Montana School of Law
{Tape: 2; Side: A; Approx. Time Count: 1.3}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 13.3-Tape 2; Side B; 11.0}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 2; Side: B; Approx. Time Count: 11.1}

HEARING ON SB 289

Opening Statement by Sponsor: SEN. DOROTHY ECK
{Tape: 2; Side: B; Approx. Time Count: 13.1}

Proponents' Testimony:

GENE KISER, Montana Board of Crime Control
{Tape: 2; Side: B; Approx. Time Count: 16.9}

GLORIA EDWARDS, Gallatin County Victim/Witness Program
{Tape: 2; Side: B; Approx. Time Count: 18.1} EXHIBITS 3-3B

MIKE CRONIN, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 22.1}

Opponents' Testimony:

BOB GILBERT, Montana Magistrates Association/Montana Tax Collectors' Association
{Tape: 2; Side: B; Approx. Time Count: 22.9}

KAREN BRYSON, Helena City Court
{Tape: 2; Side: B; Approx. Time Count: 27.8; Comments: Tape broke and part of testimony was lost while replacing it.}

Questions From Committee Members and Responses:
Tape: 3; Side: A; Approx. Time Count: 0.8 - 13.2}

Closing by Sponsor: SEN. ECK
{Tape: 3; Side: A; Approx. Time Count: 12.4}

HEARING ON SB 382

Opening Statement by Sponsor: SEN. JOHN HARP
{Tape: 3; Side: A; Approx. Time Count: 15.0; Comments: CHAIRMAN CLARK limited testimony to 30 minutes per side.}

EXHIBIT 2
DATE 3/25/97
SB 329

EXPLANATION OF SENATE BILL NO. 329

Entitled: "An Act Generally Revising the Laws Governing Limited Partnerships, Business Corporations and Limited Liability Companies...."

I. **Summary of Changes to Business Corporations Act**: Section 1 adds a new section that ensures the limited liability of shareholders in a shareholder's agreement does not meet the technical requirements of the Business Corporations Act. It encompasses much of the flexibility allowed shareholders of a Montana Close Corporation.

II. **Summary of Changes to Limited Liability Company Act**:

A. Section 2, Amending MCA Section 35-8-304 "Liability of members to third parties." The additions made by this section provide much the same protections for members of limited liability companies ("LLCs") as does Section 1 of the Act for shareholder's of corporations.

B. Section 3, Amending MCA Section 35-8-1306 "Responsibility for Services." The technical correction made by this section clarifies that a member, as well as an employee, of a professional services LLC will receive the limited liability protection that an LLC is intended to provide.

III. **Summary of Changes to the Limited Partnership Act**

A. Sections 4 through 32, Amending the Limited Partnership Act to Include 1985 Amendments to the Uniform Limited Partnership Act. The Legislature adopted the Uniform Limited Partnership Act of 1976 ("1976 ULPA"). In 1985 the Uniform Law Commission amended the 1976 ULPA. It was recently brought to the attention of the Business, Estates, Trust, Tax and Real Estate Section of the State Bar of Montana that Montana has not yet adopted the 1985 amendments to the 1976 ULPA. The proposed changes simply adopt the 1985 amendments to the 1976 ULPA.

1. Simplifies the Certificate of Limited Partnership. The Uniform Law Commission in its prefatory note indicated that the 1985 changes eliminate the administrative and logistical burdens and expenses connected with filing a detailed Certificate of Limited Partnership. The 1985 changes streamline the requirements of the Certificate of Limited Partnership so that it serves as notification of those basic matters important to third parties dealing with the partnership. The prefatory note is appended in full, Appendix I.

2. Clarifies the Limited Liability of the Limited Partner. The Uniform Law Commission prefatory note explains that the 1985 amendments to the 1976 ULPA adopt a detrimental reliance test to determine the liability of a limited partner to third parties as opposed to a requirement of actual knowledge.

B. Sections 8 and 25 Amending the Limited Partnership Act to Provide Federal Estate Planning Opportunities for the Closely-Held Family Business, Ranch and Farm. The proposed changes deviate from the 1976 ULPA with 1985 Amendments in two important

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 27, 1997, at 8:30 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Hanson was excused until 10:00 AM.

Members Absent: Rep. Ahner was absent until 12 noon.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action:
TABLED: SB 178, SB 289, SB 320, SB 382
BE CONCURRED IN: SB 201, SB 329, SB 383
BE CONCURRED IN AS AMENDED: SB 369, SB 314, SB 263, SB 219, SB 283
SB 110 TO RECONSIDER - FAILED

EXECUTIVE ACTION ON SB 329

Motion: **REP. KOTTEL moved SB 329 BE CONCURRED IN.** **EXHIBIT 11**
{Tape: 5; Side: A; Approx. Time Count: 22.4}

Discussion:
{Tape: 5; Side: A; Approx. Time Count: 24.3; Comments: REP. GRIMES requested his remarks be noted for the permanent record.}

Vote: The motion carried 18 - 2; REPS. HURDLE and WYATT voting no. **REP. KOTTEL will carry SB 329.**

EXECUTIVE ACTION ON SB 289

Motion: **REP. SANDS moved SB 289 BE CONCURRED IN.**
{Tape: 5; Side: A; Approx. Time Count: 26.2}

Discussion: **EXHIBITS 12-14**
{Tape: 5; Side: A; Approx. Time Count: 26.5}

Motion/Vote: **REP. ANDERSON moved to table SB 289.** The motion carried 17 - 3; REPS. McCULLOCH, SANDS and PEASE voting no.

EXECUTIVE ACTION ON SB 110

Motion: **REP. GRIMES moved SB 110 be reconsidered.**

Discussion: **EXHIBIT 15**
{Tape: 5; Side: A; Approx. Time Count: 29.6-Tape 5; Side B; 2.0; Comments: REP. AHNER requested that Hank Hudson be allowed to speak on the bill. REP. McGEE objected because the discussion was on the motion to reconsider. REPS. GRIMES and WYATT explained their reasons for supporting the motion.}

Vote: The motion to reconsider carried 14 - 6; REPS. McGEE, MOLNAR, BOHARSKI, CURTISS, ANDERSON, and HURDLE voting no.

Motion: **REP. GRIMES moved SB 110 BE CONCURRED IN.**
{Tape: 5; Side: B; Approx. Time Count: 6.5}

Discussion:
{Tape: 5; Side: B; Approx. Time Count: 6.7-16.8; Comments: REPS. CURTISS and McGEE stated the bill interferes with due process.}

Vote: The motion failed by roll call vote 10 - 10. REPS. AHNER and BERGMAN voted aye by proxy. REP. TASH voted no by proxy.
{Tape: 5; Side: B; Approx. Time Count: 17.6} **EXHIBIT 16**

Motion: **REP. SANDS moved to adjourn.** The meeting was adjourned.

EXHIBIT 11
DATE 3/27/97
SB 329

The University of Montana

School of Law
The University of Montana
Missoula, Montana 59812-1071
Phone: (406) 243-4311
FAX: (406) 243-2576

March 26, 1997

Representative Bob Clark
Chairman, House Judiciary Committee
Montana House of Representatives
Capitol Station
Helena, Montana 59620

Re: [redacted]

Dear Representative Clark:

I am writing in an effort to address concerns raised by Representatives Ellingson and Kottel regarding Sections 2 and 3 of Senate Bill 329.

Section 2 of Senate Bill 329 adopts the language of Section 303(b) of the Uniform Limited Liability Company Act. The language derives as well from the Statutory Close Corporation Act that has already been enacted by the Montana Legislature. Section 2 would amend Section 35-8-304 of the Montana Limited Liability Company Act to read:

> (2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or mangers of the limited liability company.

As adopted by the Legislature, Section 35-9-306 of Montana's Statutory Close Corporation Act reads:

> The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

The proposed language reads almost verbatim to that already adopted by the Montana Legislature in a similar context where investors in a closely-held business receive limited liability protection.

Representative Ellingson was concerned that the amendment to the statute would preclude "piercing the limited liability company veil." The Official Comments to MCA Section 35-9-306 as they appear in the Annotations indicate that this should not be the case. The Official